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APR 11 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Rules Governing Telephone
Companies' Use of Customer
Proprietary Network Information

CC Docket No. 90-623
CC Docket No. 92-256

COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its comments in the above-referenced matter. Cox believes changes in the Commission's rules are necessary to equalize competition among enhanced service providers ("ESPs") and maintain the level of privacy customers expect with regard to customer proprietary network information ("CPNI").

I. INTRODUCTION

The CPNI rules adopted by the Commission in the Computer III Remand Order^{1/} were intended to balance the privacy interests of consumers, competitive equity and efficiency. The rules originally were applied only to the Bell Operating Companies ("BOCs") but recently have been imposed on GTE as well.^{2/} The rules adopted in the Computer III Remand Order limit CPNI access for non-BOC ESPs in order to preserve the privacy expectations of consumers. At the same time, the Commission hoped to promote efficiency by permitting BOC integrated marketing personnel to use the CPNI of residential and small business

1/ Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Carrier Safeguards, Report and Order, 6 FCC Rcd 7571 (1991) (Computer III Remand Order).

2/ Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, Report and Order, CC Docket No. 92-256, FCC 94-58 (rel. April 4, 1994). Any reference to BOCs in this pleading also is intended to include GTE.

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customers without prior authorization. Finally, the rules were intended to limit the competitive advantage BOCs possess because of their control over CPNI by requiring them to obtain prior authorization before using the CPNI of customers with over twenty lines.

Cox is a diversified media and telecommunications company that, through subsidiaries, provides enhanced telecommunications services. Cox believes the CPNI rules adopted in the Computer III Remand Order fail to achieve the optimal balance of privacy, efficiency and competitive equity. The current rules provide BOCs essentially unrestricted access to CPNI while giving non-BOC ESPs almost no access to this information. Because residential subscribers are not informed of their CPNI rights, they have no practical ability to prevent use of their CPNI. Larger users, who have the ability to restrict BOC access to CPNI, nevertheless can be intimidated by threats that they will be provided with a lesser degree of service by BOC customer service representatives if they limit access to their CPNI.^{3/}

While BOC access to CPNI is essentially unrestricted, non-BOC ESPs have virtually no access to CPNI. Under existing rules, a non-BOC ESP only would be able to obtain the CPNI of customers that affirmatively request disclosure. The likelihood of small business and residential customers initiating a disclosure request is minimal. Thus, because the primary use of CPNI by ESPs is to solicit new customers for enhanced services, non-BOC ESPs essentially can have access to CPNI only when it is not particularly valuable, i.e. after a business relationship is established. While a non-BOC ESP is able to solicit consents from

3/ See Computer III Remand Order, 6 FCC Rcd at 7605.

existing customers, it only could solicit consents from new residential and small business customers if it obtained a mailing list and BOCs refuse to make such mailing lists available to their competitors. Larger users, on the other hand, were generally aware of their CPNI rights before the Computer III Remand Order and those rules did nothing to facilitate access by non-BOCs to the CPNI of BOC customers.

Cox believes the proposals contained in these comments would better serve the public interest by allowing non-BOC ESPs greater access to CPNI while enhancing the ability of consumers to protect their privacy expectations. Rather than determining whether CPNI should be disclosed by looking solely at the identity of the party requesting disclosure, the Commission's Rules should incorporate the different privacy expectations consumers have for different types of information. This model of CPNI disclosure also serves to foster competition in the market for enhanced service by providing equal treatment of BOC-affiliated and non-BOC ESPs.

II. THE COMMISSION SHOULD ADOPT A NEW MODEL FOR CPNI THAT MORE ACCURATELY REFLECTS CONSUMER PRIVACY EXPECTATIONS AND MORE EFFECTIVELY PROMOTES THE DEVELOPMENT OF COMPETITION IN THE PROVISION OF ENHANCED SERVICES

A. The Commission's Treatment of CPNI Should Promote the Development of Competition in the Provision of Enhanced Services

The Commission's CPNI rules provide BOC enhanced service marketing personnel access to CPNI that is not disclosed to non-BOC ESPs or to consumers. This preferential access to CPNI gives BOC-affiliated ESPs an

artificial competitive advantage based solely on the status of the BOC as a monopoly local exchange provider. As long as BOC-affiliated ESPs retain this preferential access to CPNI, consumers will not receive the full benefits of competition in the market for enhanced services. The model of CPNI disclosure suggested below rectifies this disparity in access to CPNI in a manner that more closely conforms to the expectations of consumers.

B. Consumers Have Different Privacy Expectations for Different Types of Information

The privacy expectations of consumers for information related to their business dealings vary depending on the type of information at issue. Some information clearly is expected to remain confidential while other information carries no such expectation. For example, a magazine subscriber would not be surprised if the magazine released the customer's name and address, but the subscriber would not expect the magazine to release the subscriber's credit card number.

This same range of privacy expectations applies to a consumer's dealings with the telephone company. Customers expect the phone company to release their name, address and telephone numbers to the public unless a customer requests otherwise. Conversely, customers expect that certain information (such as the number of calls made to a particular telephone number) will be released only in rare cases, such as when it is demanded by law enforcement officials. In between these two categories of information, some information may have less direct privacy implications for most people but raise concerns for others. For example, whether a customer purchases residential or

business service may not implicate privacy concerns for most people, although home-based businesses may not want such information disclosed.

The Commission's CPNI rules should be amended to reflect the level of privacy expected by consumers for various types of information. For example, information which is generally available (e.g., directory information), should remain available to all parties under the same general terms.^{4/}

Conversely, CPNI that directly implicates the privacy interests of most consumers (e.g., records of calls to a particular number) should not be disclosed to anyone (including BOCs and their affiliated ESPs) unless disclosure is specifically requested by the customer. CPNI that raises less direct privacy concerns for most consumers (e.g., the number of access lines to a customer's residence or business) should be generally available to all ESPs unless the customer specifically objects to disclosure.

C. BOCs Should Be Required to Make CPNI Available on Reasonable, Non-discriminatory Terms and Conditions

As outlined above, the extent to which a type of information implicates privacy interests should determine whether it is presumptively disclosed or protected from disclosure. Once it is established that a certain type of CPNI can be disclosed, there is no reason for BOC ESPs and non-BOC ESPs to be treated differently with regard to access to that CPNI. The fact that BOCs have

^{4/} Aggregate CPNI also should be included in this category. Aggregate CPNI consists of compiled data that do not identify specific customers. Because an ESP that obtains aggregate CPNI from a phone company will not be able to derive information about specific customers, aggregate CPNI raises no privacy concerns. Consequently, there is no basis for denying ESPs (BOC or non-BOC) access to aggregate CPNI. See Computer III Remand Order, 6 FCC Rcd at 7605.

been granted a monopoly in the local exchange market does not mean that information obtained by virtue of this monopoly should give them a competitive advantage in the enhanced services market.

BOC and non-BOC ESPs also should have equal opportunities to obtain customer consent to release CPNI that is not presumptively disclosable. For customers with more than 20 lines (and for all other customers under the proposal contained in this section) BOCs have a competitive advantage because their existing relationship with subscribers makes it easier for them to persuade customers to release CPNI. For example, a BOC can simply include a release form in the customer's next bill. Conversely, a non-BOC ESP will have difficulty obtaining consent from potential customers because it will not even have a mailing list for such customers unless it obtains one from another source.

To promote competition the Commission must equalize the advantage a BOC-affiliated ESP has based on the BOC's status as a monopoly provider of local exchange service. For example, if a BOC obtains a customer's consent by sending a release form in the customer's bill or by requesting a release when the customer calls the BOC's customer service personnel, any consent granted should be treated as a blanket consent to disclosure unless the customer specifically requests that a particular ESP be denied access to that customer's CPNI.^{5/} Similarly, customer requests generally to withhold CPNI should apply to all ESPs, including non-BOC ESPs. This approach does not prevent BOCs from taking steps to facilitate access to CPNI, such as permitting oral consent

^{5/} Any consent form should give the customer the option of granting consent for disclosure to non-BOC ESPs but not to the BOC.

when a customer calls, so long as the mechanism used to do so (e.g., a computer program that releases the CPNI when a customer identification number is entered) are made available on reasonable, non-discriminatory terms to non-BOC ESPs.

CPNI which is made available should be unbundled in commercially reasonable elements. In particular, BOCs should not be permitted to require ESPs to purchase CPNI covering unreasonably large market segments. For example, an ESP should not be required to purchase information regarding all of California in order to obtain data for Fresno. Similarly, data formats that are made available to the BOC's enhanced services operations should be available to non-BOC ESPs as well. Although a BOC should be permitted to charge ESPs (including BOC affiliates) for providing requested information, these charges must be non-discriminatory and based on the cost of compiling the data rather than its market value.^{6/}

III. THE PROPOSED MODEL OF CPNI DISCLOSURE PROVIDES THE OPTIMAL BALANCE OF EQUITY, PRIVACY AND EFFICIENCY

A. The Proposed Model Conforms to the Privacy Expectations of All Consumers

The primary virtue of the CPNI disclosure model described in these comments is its preservation of the privacy rights of all consumers of telecommunications services and the promotion of competition. Unlike the Commission's existing rules, residential and small business consumers would be

^{6/} In addition, any "volume" discounts given to BOC-affiliated ESPs should be scrutinized carefully to assure they are cost-based.

given a realistic opportunity to exercise their right to grant or withhold disclosure of CPNI and ESPs that compete with the BOCs will not be disadvantaged. The scope of this opportunity is consistent with the privacy expectations of consumers and the Commission's policy objective to promote competition. When there is no reasonable expectation of privacy, such as with directory information, information is released and consumers benefit through expanded marketing efforts of ESPs. When a limited privacy interest exists, consumers generally will benefit from release of the information while those consumers that have privacy concerns may prevent disclosure. In those circumstances where a strong privacy interest exists for most consumers, no action is required for consumers to maintain their privacy. Consumers that would benefit from disclosure of the information nevertheless retain the ability to release their CPNI.

B. The Proposed Model Promotes Competition Between BOC-Affiliated and Non-BOC ESPs in the Development of Enhanced Services

Under the Commission's present rules, BOCs have virtually unlimited access to the CPNI of residential and small business customers while non-BOC ESPs are effectively prohibited from obtaining such information. The model proposed above rectifies this situation by requiring BOCs to make available to non-BOCs any CPNI made available to their affiliates. Furthermore, by requiring CPNI access to be made available at cost-based rates and on reasonable and non-discriminatory terms and conditions, the potential for "sweetheart" deals between BOCs and their ESP affiliates is reduced. Because a consumer has the opportunity to prevent release of CPNI information that is presumptively

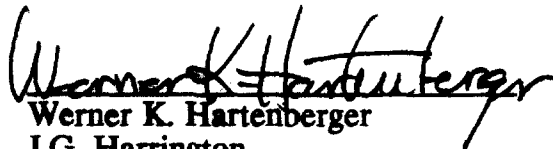
disclosable, and to release information that is presumptively protected, the rules promote competition without sacrificing consumer control over CPNI.

V. CONCLUSION

The Commission's current CPNI rules are inconsistent with the privacy expectations of consumers and do not adequately promote competition in the market for enhanced services. Cox believes the model of CPNI disclosure outlined in these comments provides a better balance of consumer privacy, competitive equity and BOC efficiency. Accordingly, Cox respectfully requests that the Commission adopt the model of CPNI disclosure proposed above.

Respectfully submitted,

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April 11, 1994